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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,088

04/14/2006

Matthias Zoch

1703 1507US

6747

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01/23/2009

DREISS, FUHLENDORF, STEIMLE & BECKER

POSTFACH 10 37 62

D-70032 STUTTGART,

GERMANY

EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

01/23/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/576,088

**Applicant(s)**

ZOOCH ET AL.

**Examiner**

Michele Kidwell

**Art Unit**

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 11-23 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 – 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al. (US 2003/0114066) in view of Cree et al. (US 5,591,149) and McAmish (US 4,774,125)

With reference to claim 11, Clark et al. (hereinafter "Clark") discloses an absorbent storage layer disposed between a topsheet and bottom sheet in a disposable sanitary product [0058] wherein absorbent storage layer having hydrophilic melt-blown microfibers [0006], [0034] and superabsorbing material [0006], [0012] in the claimed amounts as set forth in [0051]. The connection is taught in [0008] – [0009].

The difference between Clark and claim 11 is the provision that the article includes a permeable topsheet and an impermeable backsheet and the teaching of the claimed basis weight.

Cree et al. (hereinafter "Cree") teaches a catamenial napkin that includes a liquid permeable topsheet, a liquid impermeable backsheet and an absorbent core disposed therebetween as set forth in the abstract.

It would have been obvious to one of ordinary skill in the art to provide Clark with a permeable topsheet and an impermeable backsheet configuration since the use of such provides an article that effectively accepts and distributes fluids while retaining fluids and preventing undesirable leakage as taught by Cree in col. 5, lines 33 – 39 and detailed explanations of individual element.

Likewise, it would have been obvious to one of ordinary skill in the art to modify the basis weight of the microfiber to provide desired weight because it is well known in the art that a basis weight within the claimed range facilitates handling of the product which leads to an improved product as taught by McAmish in col. 3, lines 61 - 64.

With respect to the claimed strength in both a wet and dry state, the examiner contends that Clark provides an article that may be deemed structurally identical to that claimed as supported by preceding rejection and in view of admitted prior art set forth on page 2 of the instant application referencing W) 03/052190 . In light of such, one can reasonably assume that Clark will function as claimed when subjected to the claimed states.

Likewise, the applicant is reminded that the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

As to claim 12, see [0051] of Clark.

With reference to claims 13 – 14 and 22 – 23, see the rejection of claim 11.

As to claims 15 – 20, see the rejection of claim 11. Additionally, Cree teaches a sanitary product having a bottom and/or top absorbent layer with the claimed amount of meltblown fibers as set forth in col. 22, lines 39 – 46.

As to claim 21, Cree teaches a sanitary product further comprising a porous or fibrous layer disposed between said storage layer and said top sheet to rapidly absorb liquid as set forth in col. 9, lines 5 – 19.

### ***Response to Arguments***

Applicant's arguments with respect to claims 11 – 23 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/  
Primary Examiner, Art Unit 3761